

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application and complaint of	)	
<b>WESTPHALIA TELEPHONE COMPANY</b> and	)	
<b>GREAT LAKES COMNET, INC.</b> , against	)	Case No. U-17619
<b>AT&amp;T CORP.</b>	)	
_____	)	

At the April 28, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**ORDER**

On May 13, 2014, Westphalia Telephone Company (WTC) and Great Lakes Comnet, Inc. (GLC) (collectively, complainants) filed a complaint against AT&T Corp. (AT&T) alleging breach of tariff, and breach of implied-in-fact and implied-in-law contracts. Pursuant to the requirements of the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, the parties engaged in alternative dispute resolution in July 2014. On July 24, 2014, AT&T filed an answer, affirmative defenses, and counterclaims alleging violation of MCL 484.2310(2).

A prehearing conference was held on July 30, 2014, before Administrative Law Judge Suzanne D. Sonneborn (ALJ), and the Commission Staff (Staff) participated. On December 11, 2014, the ALJ issued a Proposal for Decision.

On January 27, 2015, the Commission issued an order finding in favor of complainants, and directed AT&T to pay amounts billed pursuant to lawful tariffs for intrastate switched access

service, along with associated interest and late fees (January 27 order). Among other things, the Commission found that GLC was not a competitive local exchange carrier (CLEC) for purposes of 47 CFR 61.26. AT&T appealed the January 27 order to the Michigan Court of Appeals.

Previously, AT&T had commenced a federal action against complainants involving similar issues, and on March 18, 2015, the Federal Communications Commission (FCC) issued a memorandum opinion and order addressing interstate rates, wherein the FCC found that GLC is a CLEC for purposes of 47 CFR 61.26. *In re AT&T Services Inc and AT&T Corp v Great Lakes Comnet, Inc and Westphalia Telephone Co*, FCC 15-31 (rel'd March 18, 2015). On May 24, 2016, the U.S. Court of Appeals for the D.C. Circuit issued a decision affirming the FCC's determination that GLC is a CLEC, and remanded the proceeding to the FCC for additional findings regarding whether GLC is a rural CLEC. *Great Lakes Comnet, Inc v FCC*, 823 F3d 998 (CA DC, 2016).

On January 25, 2016, GLC filed a petition for bankruptcy in the U.S. Bankruptcy Court for the Western District of Michigan. *In re Great Lakes Comnet, Inc, et al.*, Case No. 16-00290 (JTG).

On September 6, 2016, the Michigan Court of Appeals issued a decision vacating the January 27 order, and remanded this proceeding to the Commission. *Westphalia Telephone Co v AT&T Corp*, unpublished opinion per curiam of the Court of Appeals, issued September 6, 2016 (Docket No. 326100). No party appealed the September 6 order.

On November 7, 2016, the Commission issued an order determining that the Commission would take up the remand of this matter after the related action before the FCC is concluded, and the bankruptcy proceeding is either concluded or the automatic stay in that proceeding is lifted for the purpose of allowing the remand to proceed.

On March 30, 2017, the Bankruptcy Court issued an order confirming the joint liquidation plan of GLC. *See*, joint motion to dismiss, Exhibit 1.

On April 18, 2017, GLC, WTC, and AT&T filed a joint motion to dismiss this proceeding. The three parties indicate that they have executed mutual releases, and intend to file a pleading to dismiss the action that remains before the FCC. They request that the Commission dismiss this case with prejudice, and without costs or fees to any party.

On April 19, 2017, the Staff filed a letter stating that it does not oppose the motion to dismiss.

The Commission finds that this proceeding should be dismissed with prejudice.

THEREFORE, IT IS ORDERED that the complaint filed by Westphalia Telephone Company and Great Lakes Comnet, Inc., against AT&T Corp., and the counterclaims filed by AT&T Corp., are dismissed with prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 484.2203(12). To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of April 28, 2017.

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Kavita Kale, Executive Secretary